IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1713 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NANDIRAM THAKUMAL TEHALARAMANI

Versus

STATE OF GUJARAT

Appearance:

MR YM THAKKAR for Applicant No. 1

MR PANCHOLI APP for Respondent No. 1

MR DR BHATT for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 20/02/2002

ORAL JUDGEMENT

By means of filing this application under Section 482 of Cr.P.C., the petitioner has prayed that the proceedings of Criminal Inquiry No.1 of 2000 pending

before the Ld. Judicial Magistrate (F.C.) at Shahera, Dist. Panchmahals be quashed and set aside.

2. Initially, a private complaint was filed before the Ld. J.M.F.C. at Shahera and the same was sent for investigation to the police. After investigation, the police had submitted report asking B-Summary. As the complainant was not satisfied on his submissions and resistance, the Ld. Judicial Magistrate initiated inquiry under Section 202 of Cr.P.C. and after recording certain evidence issued process for the offences punishable under Sections 467, 468 and 474 read with Section 114 I.P.C. vide order dated 10.11.2000.

3. Counsel appearing for the applicant Mr.Y.M.Thakkar has taken me through the averments made in the petition and the documents produced by the applicant in support of the contentions raised. Mr.Thakkar has submitted that there is no direct allegation against the present applicant qua the document allegedly forged and produced in Civil Suit No.5 of 1991 filed in the Court of Civil Judge (J.D.), Lonawada.

4. It is the say of the prosecution that forged Banakhat has been concocted and produced in the Civil Suit with a view to defeat the claim of the plaintiff. According to prosecution, Noormohamed Abdulraheman Bhopali, owner and occupier of the land bearing Survey No.64/2 is dead and he has expired long back in the year 1927 at Shihor, Madhya Pradesh, however, the document allegedly executed by the said Noormohamed has been prepared i.e. forged in the year 1957 and the same was produced in civil prosecution by the defendent No.2 - Bhuchand Gohumal Sindhi of Civil Suit No.5 of 1991.

5. Mr.Thakkar has pointed out that the present applicant has migrated to India somewhere in the year 1967-68 and had applied to valid his entry into India in the year 1968 vide Application No.MC/896/68 dated NIL and after scrutiny, the competent authority, office of the Indian High Commission issued Migration Certification bearing No.173519 dated 26th December, 1968 and the entry of the petitioner and his family member was treated valid till 25th June 1989. These documents are at Annexure-I, Migration Certificate in Form 19 is at page 50. Of course, these are xerox copies but the same has been attested by the counsel for the applicant. On perusal of these documents do not look doubtful. It is found that there are clear impression of the signatory from the office of the Collector of Dist. Panchmahals at Godhra. It is rightly questioned by the counsel that how a person

not in India in the year 1957 would be a party in forging the document which has been allegedly forged in the year 1957 or the time proximate. Xerox of the documents allegedly forged is not produced by the applicant but during the course of oral submission learned A.P.P. has rightly submitted that after detailed investigation the police agency had asked for B-Summary. There is no reference of this Banakhat in written statement filed by the present petitioner nor he had places reliance on the questioned document.

6. I have seen the order passed by the Ld. Judicial Magistrate issuing process against the accused. It seems that Ld. Judge has not applied the mind qua of relevant aspects and the facts reflected in the papers of investigation which were very much available to him with the B-Summary report, otherwise Court could have put some questions to the witnesses examined by the complainant during inquiry under Section 202 of Cr.P.C.

7. It is true that this Court is supposed to read the averments in the complaint and is not supposed to scrutinize and evaluate the evidence or to see the defence plea. On the strength of facts stated in the petition itself and in view of the above referred documents and especially when the present applicant was not a party in producing the documents before the trial Court, he cannot forcibly be asked to face criminal trial.

8. In view of the Apex Court judgement in the Case of State of Haryana & Ors Vs. Bhajanlal and others, reported in 1992 Supp (1) SCC 335, the present case would fall in the category of cases (1) and (5) referred in para 102 of the said judgement.

9. The petition is, therefore, allowed. Inquiry Case No.1 of 2000 pending before the Ld. Judicial Magistrate (F.C.) at Shahera, Dist. Panchmahals is hereby quashed and set aside qua the present petitioner only. Rule is made absolute accordingly. Direct service permitted.

(C.K.Buch, J)

'Bhavesh'